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October 3, 2002

Ms. Charlotte R. Mooney, Chief
 Generator & Recycling Branch (5301W)
 US Environmental Protection Agency
 Ariel Rios Building
 1200 Pennsylvania Ave, NW
 Washington, DC 20460

RE: EPA/API Meeting on Definition of Solid Waste Reform

Dear Ms. Mooney:

We would like to thank you and your staff for taking the time to meet with us on September 25, 2002 to discuss the Office of Solid Waste's (OSW) efforts to make the definition of solid waste (DSW) regulations more consistent with the Ass'n of Battery Recyclers (ABR) decision. We found the meeting very useful and constructive and hope you feel the same way.

During the meeting, we requested that OSW consider the inclusion of a variety of suggested approaches to redefining the DSW in the upcoming proposed rule. While we understand that the drafting of the proposed rule is already in progress, API believes that by offering multiple approaches for public comment in that notice -- whether or not EPA prefers one option over all others - OSW will gain valuable stakeholder feedback on different approaches to reform. This would enable OSW to consider the strengths and weaknesses of various possible revisions, which should prove valuable to EPA when deciding upon a final definition.

During the meeting, we also reviewed draft language that API believes adequately addresses the inconsistencies between the current DSW and the direction given by the court in the ABR decision. You requested that we provide you with an electronic version of our draft language (which is being done simultaneously with this mailing), along with a brief overview explaining our reasoning and context for developing draft language.

In short, we attempted to apply three principles as we drafted our suggested definition. First, we strived to be true to the concept of "discard," as described in the relevant court decisions, as the core criterion in determining what is a "solid waste." Second, we tried to make the definition as simple as possible. Third, we retained as much as possible of the existing language, concepts and structure of the current regulatory definition of solid waste, where consistent with the "discard" principle, given that EPA and the regulated community are already familiar with that definition.

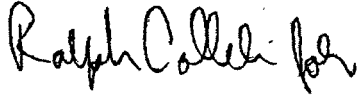
Based on your constructive comments during our discussion, we have revised our suggested draft definition slightly to reflect your comments. We think these revisions have improved our draft,

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and we hope that you find the suggested language helpful in your rulemaking effort. Of course, API does not believe that any drafts or suggested revisions to the DSW should be considered "set in stone" at this early date. API would be happy to consider and discuss any further questions or suggestions you might have for further improving our suggested draft language. In fact, we may well offer additional improvements to our own suggested definition at some point in the future.

If you have any questions or would like to discuss any of these issues in further detail, please do not hesitate to contact me at (202) 682-8482 or Ralph Colleli at (202) 682-8252.

Respectfully,

A handwritten signature in cursive script, appearing to read "Ralph Colleli for".

Cindy Gordon

cc: Ross Elliott (EPA)
Ingrid Rosencrantz(EPA)
Teena Wooten (EPA)
Marc Meteyer (API)

DRAFT: FOR DISCUSSION PURPOSES ONLY

§ 261.2 Definition of solid waste.

(a)(1) A *solid waste* is any discarded material, other than an uncontained gas, that is not excluded by § 261.4(a) or not excluded by variance granted under §§ 260.30 or 260.31.

(2) A *discarded material* is any material which is disposed of, thrown away or abandoned, including:

(A) any material that is accumulated, stored, or treated (but not recycled) before or in lieu of being disposed of, thrown away or abandoned;

(B) a *military munition* identified as a solid waste in 40 CFR 266.202;

(C) any material that accidentally enters the environment as the result of a spill, leak, or similar event, and that is not recovered, or that is recovered but otherwise meets the definition of *discarded material*;

(D) any residual material that is accumulated speculatively;

(E) any residual material used as an ingredient in a process to make or recover any product, but where:

(i) there is no known use or market for the product; or

(ii) the residual material does not contribute substantially to the desired properties of the product; or

(iii) hazardous metals or organic constituents (listed in Appendix VIII to 40 C.F.R. Part 261), not ordinarily found in raw materials for which the residual material substitutes, are contained in the residual material at greater than trace levels, do not contribute to the desired properties of the product, and are not substantially removed in the production or recovery process or substantially immobilized in the product;

(F) any residual material that is used as a substitute for a commercial product, where the residual material is ineffective for the claimed use;

(G) any material burned for the primary purpose of destruction. A residual material is presumed to be burned for the primary purpose of destruction if it is not being regenerated, valuable materials are not being recovered from it, and the heat content of the material is less than 5000 Btu per pound;

(H) any residual material used as an ingredient in the production of fuels, and any material used as an ingredient in the production of fuels in lieu of its normal manner of

use, *provided that* any hydrocarbon-bearing material from petroleum exploration, production, refining, transportation or marketing or from petrochemical manufacturing, used to produce fuels at a petroleum refinery (SIC code 2911) is not discarded; and

(I) any product (*i.e.*, output) made or recovered from discarded materials described in section 261.2(a)(2)(E) or any fuel (*i.e.*, output) produced from discarded materials described in section 261.2(a)(2)(H).

(b) *Residual materials* are spent materials, pollution control residues, or by-products.

(c) A *spent material* is any material that has been used and as a result of contamination can no longer serve any purpose for which it was produced without processing.

(d) A *pollution control residue* is any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(e) A *by-product* is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. *By-product* includes process residues such as slags or distillation column bottoms. *By-product* does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(f) A residual material is *accumulated speculatively* if during a calendar year (commencing on January 1), the amount of the material that is recycled or transferred to a different site for recycling is less than 75 percent by weight or volume of the amount of that material accumulated as of January 1.